IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

WP(C).No. 26766 of 2007(J)

PETITIONER:

ARAVINDAKSHA PANICKER N,
PUTHUPARAMBIL HOUSE, MUHAMMA.P.O.,
CHERTHALA, ALAPPUZHA DISTRICT.

BY ADV. SRI.V.K.SUNIL
SRI.AJEY THOMAS

RESPONDENTS:
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1. **THE ACCOUNTANT GENERAL (A & E)KERALA,**
   THIRUVANANTHAPURAM-39.

2. **INSPECTOR GENERAL OF REGISTRATION,**
   REGISTRATION I.G. OFFICE,VANCHIYOOR,
   TRIVANDRUM.

3. **DISTRICT REGISTRAR (GENERAL)**
   COLLECTORATE P.O.,VANCHIYOOR, TRIVANDRUM.

4. **THE DISTRICT TREASURY OFFICER,**
   PENSION PAYMENT TREASURY,ALAPPUZHA.

BY SR.GOVERNMENT PLEADER SRI.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/092007, THE COURT ON 10/10/2007 DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: THE DESCRIPTIONS OF PROPERTIES FURNISHED IN THE APPLICATION FOR ENCRUMBRANCE.

EXT.P2: THE DESCRIPTION OF PROPERTIES IN THE ORDERS OF ATTACHMENT.

EXT.P3: COPY OF THE DISCHARGE PETITION FILED ON BEHALF OF THE PETITIONER AND OTHER ACCUSED BEFORE THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THRISSUR.

EXT.P4: COPY OF THE GPO NO.P-02/0K/G/33596706 DTD. 24/12/2004 ISSUED BY THE 1ST RESPONDENT.

EXT.P5: COPY OF THE GPO NO.P-02/PENA/556/OK/04-05 DTD. 13/12/2004 ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT.

EXT.P6: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DTD. 7/04/2007.

EXT.P7: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO TAKE STEPS FOR DISBURSEMENT OF GRATUITY.

/TRUE COPY/

P.S.TO JUDGE

KSS

V.GIRI, J.

W.P.(C).No.26766 of 2007 J

Dated this the 10th day of October, 2007.

JUDGMENT

The question that is posed for consideration in this writ petition is one which seems to arise in several cases, in slightly varying forms. Death-cum-Retirement Gratuity {for short "**DCRG"}** is the retirement benefit that a Government servant is entitled to, as part of his right, for the services rendered by him. In an ideal situation a Government servant would probably receive the DCRG due and admissible to him within a month of his retirement. Again, in an ideal situation, the Government servant would start receiving his pension in the month following his retirement. But, obviously there are plethora of instances where it would not be possible, either to disburse the DCRG due and admissible to the Government servant immediately following the retirement, or pay the pension, with effect from the month following retirement. The statutory rules framed under the Public Services Act govern the right to receive pension and gratuity. They also provide for a time frame, within which, the liability of a Government servant, arising in relation to the period during which he had rendered service, would

be determined in such a manner that losses, if any, caused to the Government by reason of the action or inaction on the part of the Government servant, could be recovered from the retirement benefits due to the Government servant. At the same time, such rules recognize the right of the Government to recompense itself against any pecuniary loss suffered by it due to any action or inaction on the part of the Government servant, as a measure of damages, by recourse to the general remedy available before a Civil Court, like any other legal person, who has suffered damage on account of the breach committed by another.

2. This court has considered different facets of this question on different occasions. Law has been laid down in this regard by Benches on different occasions. On a conspectus of the decisions rendered by this court on various occasions, it was felt that one aspect arising out of a possible literal interpretation of Rule 3A (a) of Part III of the Kerala Service Rules (hereinafter referred to as '**the Rules**'), has not been the subject matter of a decision of this court. In the circumstances, learned counsel for the petitioner Mr.V.K.Sunil and Mr.Nandakumar, learned Senior Government Pleader made elaborate submissions on this aspect.

Mr.S.P.Aravindakshan Pillai was requested to assist the court. Counsel made reference to most of the major decisions taken by this court on the broad aspect of how far is it open to the Government to treat the pendency of judicial proceedings as a factor to refrain from disbursing the DCRG due and admissible in favour of a Government Servant.

3. The petitioner retired from service as an Upper Division Clerk in the Registration Department on 30.11.2003. An amount of Rs.1,62,180/- has been found to be due and admissible to the petitioner by way of DCRG. In spite of the fact that the amount has been sanctioned by the Accountant General on 24.12.2004, it has not been disbursed to the petitioner, so far. This is on account of the fact that there is a criminal prosecution against the petitioner as C.C.No.42/04, pending before the Special Judge, Thrissur. The petitioner contends that more than 4 years have elapsed since his retirement on 30.11.2003. Therefore, the State is not entitled to withhold the DCRG due to him under any count. The representations filed by him in this regard, as Exts.P6 and P7 dated 7.4.2007, have not been heeded to and hence the writ petition seeking a direction to release the

DCRG due to the petitioner. Specific reference in this regard is made to Note 2 to Rule 3 of Part III of the Rules, which prescribes a maximum period of 3 years for withholding of the DCRG even in cases where the Government servant is liable to pay any amount to the Government; and such liability is sought to be adjusted against DCRG due to him. No such liability has been determined in relation to the petitioner, so far, and consequently there is no justification for not releasing the DCRG found due and admissible to the petitioner as per Ext.P4 order.

4. On instructions, it was submitted by the learned Government Pleader that the reason for not disbursing the DCRG to the petitioner is the pendency of C.C.No.42/04 on the file of the Enquiry Commissioner and Special Judge, Thrissur. Since the Calender Case constitutes a judicial proceeding within the meaning of Rule 3A (a) of Part III of the Rules, until the said proceedings are completed, he is not entitled to gratuity or DCRG. It is this crucial aspect arising out of Rule 3A (a) of Part III of the Rules that actually arises for consideration in the present case.

5. Part III of the Rules deals with the regulation of the pension payable to all the employees, to whom service rules are

applicable. Rule 2 of the Rules declares that future good conduct shall be an implied condition for every grant of pension. Thus, the Government is entitled to withhold or withdraw a pension or part thereof, if a pensioner is convicted of a serious crime or is found guilty of a grave misconduct. Of course, any such order could be passed only after due notice to the pensioner, consideration of his objections and hearing. "Serious Crime" and 'grave misconduct' are as indicated in the Explanation to the Rule. The Public Service Commission shall also be consulted before final orders are passed. Mr.Nandakumar, learned Senior Government Pleader, emphatically submits that the Rules therefore indicate continued good conduct on the part of the retired Government servant as a condition precedent for the continued grant of pension. He submits that though pension has been declared to be a right available to a Government servant, the right to receive the same is statutorily conditional upon continued good conduct on the part of the pensioner. The Government, in given circumstances and subject to law, has a right to withdraw the pension or reduce the same.

6. Rule 3 of the Rules deals with a slightly different situation. Thereunder, the Government reserves to themselves the right of withholding or withdrawing the pension or any part of it, whether permanently or for a specified period and also the right of ordering that any pecuniary loss caused to the Government shall be recompensed by recovery from the pensioner. But, this is subject to a finding that the pensioner is guilty of grave misconduct or negligence, during the period of service, in a departmental or judicial proceedings. Of course, this is again subject to the conditions mentioned in the proviso to Rule 3, which maintains that the departmental proceedings, if instituted prior to retirement, shall be continued for the purpose of Rule 3. The departmental proceedings could be instituted under Rule 3 even after retirement, for the purpose of recovering any loss caused to the Government by the Government servant, but with the sanction of the Government and subject to the rider that it shall not be in respect of any event which took place 4 years before such institution.

7. Insofar as the judicial proceedings instituted after retirement are concerned, it can only be in respect of a cause of

action which arose even within four years prior to retirement. Judicial proceedings could be a criminal proceeding as also a civil proceeding.

8. Notes 2 and 3 of Rule 3 are significant and are extracted hereunder:

> **"Note-2:- The word 'pension' used in this rule does not include Death cum Retirement Gratuity. Liabilities fixed against an employee [or pensioner] can be recovered from the Death cum Retirement Gratuity payable to him without the departmental/judicial proceedings referred to in this rule, but after giving the employee [or pensioner] concerned a reasonable opportunity to explain.**
> **Note 3:- The liabilities of an employee should be quantified either before or after retirement and intimated to him before retirement if possible or after retirement within a period of three years on becoming pensioner. The liabilities of a pensioner should be quantified and intimated to him."**

9. Thus, Note 2 makes it clear that the word 'pension' used in Rule 3 excludes DCRG. It further makes it clear that the liability fixed against an employee or pensioner can be recovered from the DCRG payable to him, <u>without the departmental/judicial proceedings referred to in the rule,</u> but after giving the employee or pensioner a reasonable opportunity of being heard. Note 3

provides that such quantification of the liability and due intimation thereof to the Government servant should take place before retirement, as far as possible. But if not, it should be done within a period of 3 years after the retirement. But the liabilities of the pensioner should be intimated to him/her.

10. There is, therefore, an outer limit of 3 years prescribed by the Statute, reckoned with reference to the date on which the Government servant becomes a pensioner within three years of the date of his retirement for the Government to withhold the DCRG payable to the Government servant. Within the said period of 3 years, it is open to the Government to quantify the liability of the Government servant, after giving him an opportunity of being heard and then directing the adjustment of the liability from the DCRG. I did not come across any Rule or a Note thereto, which provides for an extension of this maximum period of 3 years, during which the Government is entitled to withhold the DCRG for absorbing a pecuniary loss caused to the Government.

11. It is relevant to note in this context that, the right of the Government to fix the liability of a Government servant or a

pensioner and adjust the same for recompensing itself of a loss caused to it from the DCRG due to the pensioner is independent of the initiation, continuance or pendency of a departmental or judicial proceedings. In other words, the right to fix the liability of a Government servant and right to recover from the DCRG payable to the Government servant is unaffected and is independent of either the right to institute departmental proceedings or any judicial proceedings against the Government servant.

12. Rule 3A (a) is relevant and is, therefore, extracted:

> **"3-A.(a) Where any departmental or judicial proceeding is instituted under Rule 3 or where a departmental proceeding is continued under clause (a) of the proviso thereto, against an employee who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension, but no gratuity or Death cum Retirement Gratuity shall be**

paid to him until the conclusion of such proceeding and the issue of final orders thereon."

13. Thus, what is contemplated under the aforementioned provision is the right of the pensioner to get a provisional pension reckoned with reference to his qualifying service, even in cases where departmental or judicial proceedings is instituted under Rule 3. It is the last para of 3A(a) viz., the following words "but no gratuity or DCRG shall be paid to him until the conclusion of such proceedings and issue of final orders thereon" that has been projected as a provision which enables the Government to withhold the DCRG till conclusion of the judicial proceedings or departmental proceedings, as the case may be, as comprehended by Rule 3. In other words, what is contended is that notwithstanding the time frame of a maximum period of 3 years mentioned in Note 3 to Rule 3, no time limit is mentioned for quantification of the liability of the pensioner and adjustment against the DCRG. that if there is any departmental proceeding or a judicial proceeding pending even beyond the period of 3 years, then it is open to the Government to withhold the DCRG until such proceedings are finally concluded.

14. Literal interpretation of the last portion of Rule 3 A (a) would quite possibly suggest an acceptance of the said view viz., that if there is a departmental or judicial proceedings, the Government can wait till such proceedings are over and withhold the DCRG payable to the pensioner till such time. If the argument is extended to its logical conclusion, then it can be withheld till conclusion of such proceedings before the Apex Court. After all, an appeal is a continuation of the proceedings and the proceedings can be said to have finally come to an end only when it is disposed of by the Hon'ble Supreme Court. The question is whether the last para of Section 3A (a) should be applied in such a pedantic literal manner or is it susceptible of a more reasonable view.

15. It will be useful to refer to few Rules in this context. Rule 116 is included in Section IV of part III of the Rules dealing with anticipatory pension. Ruling 5 in Rule 116 provides that if liabilities could not be assessed and fixed before retirement of the Government employee, then effort should be made to assess and adjust the recoverable dues within a period of one year from the date of retirement. If it cannot be done within one year, the

amount withheld from the DCRG or the surety bond or cash deposit made by the Government servant shall be released to him. Ruling 6 declares that if in case where DCRG has been released by resort to Rule 5 and it is later found that the loss caused to the Government by the Government servant is determined as his liability cannot be fully recovered from such DCRG, then it is open to the Government to proceed against the retired employee in a civil court for recovering the pecuniary loss caused to the Government.

16. Reference could also be made to Rule 59 B of Part III of the rules which enables the Government to reduce the pension, if the Government finds that the service of the Government servant has not been thoroughly satisfactory. So also Rule 11(ix) of the Kerala Civil Services (Classification, Control and Appeals) Rules (hereinafter referred to as 'CCA Rules') provides for reduction of pension as a punishment. These rules have been referred to by Mr.Pillai in the course of the arguments that the Kerala Service Rules and other Rules treat pension and DCRG differently, though both are classified under the broad heading "**retirement benefits**". The Rules provide for reduction

of pension payable to a Government servant, both as a punishment and as a measure of the Government recompensing any loss that is caused to it. Forfeiture of a portion or even whole of the same, though under exceptional circumstances, is a right reserved by the Government unto itself in terms of Rule 2 part III of the Rules. Reduction of the pension can be termed as a punishment as indicated above.

17. But there is no such omnipotent power reserved by the Government unto itself in the case of DCRG. Significantly, there is no provision anywhere in any other Rules under the Public Services Act or in any plenary statute which enables the Government to forfeit in whole or in part, the DCRG payable to an employee. No doubt, Notes 2 and 3 of Rule 3 of Part III of the Rules clearly states that the Government is entitled to quantify the liability incurred by any Government servant during the period of his service and recover such amounts from the pensioner from the DCRG due to him. But the provision for recovery of a loss caused to the Government, treated as a liability of the Government servant, is different from forfeiture of the DCRG, which the Government servant is entitle to, either in whole or in

part. As a matter of fact, the provision for recovering any loss caused to the Government from the DCRG payable to the Government servant indicates that even when the Government recovers any loss from the Government servant, it recognizes the fact that DCRG payable to the Government servant is a property of the Government servant, and the right of recovery is only being exercised as against a property which otherwise, in title belongs to the Government servant.

18. But this right of the Government to quantify the liability of a Government servant, intimate the same to him and then recover the said amount from the DCRG payable to the pensioner is to be exercised within a maximum period of three years, reckoned from the date on which the Government servant becomes a pensioner. If no quantification takes place within a period of 3 years, as referred to in Note 3 to Rule 3, then it cannot be done for the purpose of recovering it from the DCRG payable to the pensioner. Of course, it is open to the Government to quantify the liability of a Government servant even after a period of 3 years. But, in such cases, recovery can be effected only by recourse to proceedings before a Civil court.

These paramount rights of the Government like any other legal person, who has suffered pecuniary loss on account of the breach of another, is obviously not restricted by the Rules and in fact, is recognized by Ruling 6 to Rule 116 of Part III of the Rules. But, beyond the period of 3 years from the date of retirement, the DCRG payable to the pensioner becomes inaccessible to the Government, for the purpose of recovery or adjustment.

19. Note 2 to Rule 2 of Part III of the Rules significantly excludes DCRG from the ambit of "**pension**" as referred to in the Rules. In other words, the departmental proceedings or judicial proceedings as referred to in Rule 3 is unrelated to the right of a Government servant to receive the DCRG due to him. Consequently, Rule 3 does not enable the Government to withhold in whole or in part any amount due to a Government servant by way of DCRG, by reason of the initiation, continuation or pendency of departmental proceedings or judicial proceedings as contemplated by Rule 3 of the Rules, read in the light of the proviso thereto. It is in this context that the last portion of Rule 3 A (a) which provides for the non-payment of DCRG, pending completion of the departmental proceedings or judicial

proceedings should be looked at. In my view, the following factors would assume significance.

(a) The rules treat pension and DCRG differently, though both are broadly classified under 'retirement benefits'.

(b) The rules provide for forfeiture of the pension, in part or even in whole in certain circumstances. Rules do not provide for forfeiture of DCRG.

(c) Reduction of the pension or withholding of the pension is provided for under the Rules either as a measure of the Government recompensing itself against any pecuniary loss caused by the Government servant or as a measure of punishment itself. The Rules do not provide for forfeiture of the DCRG as a punishment. Even where the Rules provide that the liability of the Government servant can be quantified within the time frame and can be adjusted from the DCRG, what is provided is not a forfeiture, but a recognition of the right of the Government servant to receive DCRG treating it as his property and when the Government adjusts the liability and recovers it from the DCRG, it is as a

measure of the Government recovering a loss caused to it and obviously, such recovery is an acknowledgment of the Government servant's tile to the DCRG.

(d) More importantly, the right of the Government to quantify the liability of a Government servant and adjust it against the DCRG will have to be exercised within a period of 3 years from the date of retirement of the Government servant (Note 3 to Rule 3 of Part III of the Rules). No such time frame is contemplated in the case of pension. As Rule 2 indicates pension can be withheld in whole or in part.

20. In the light of the aforementioned factors, I am of the view that the pendency of the departmental proceedings or judicial proceedings, as contemplated by Rule 3 of Part III of the Rules, is not a reason for the Government to withhold the DCRG admissible and due to a Government servant, beyond the period of 3 years from the date on which the Government servant becomes a pensioner, as contemplated in Note 3 to Rule 3 of Part III of the Rules. If the determination and quantification of the liability is not done within the said period of 3 years, then the

DCRG cannot be withheld any more. It has to be released to the Government servant. This is, of course, without prejudice to the right of the Government to initiate separate proceedings against the Government servant before a Civil Court for recovery of any loss caused to the Government by the Government servant. But exercise of such right is unrelated to the right of the Government servant to get his DCRG.

21. If this view is accepted, then the last portion of Rule 3A (a) will have to be suitably construed or read down, and should be restricted to cases where the Government is in a position to exercise the right of adjustment of liability of a Government servant from the DCRG payable to him. In other words, the interdiction against payment of DCRG as contemplated by Rule 3 A(a) will apply only for a period of 3 years from the date on which the Government servant becomes a pensioner as contemplated under Note 3 Rule 3. Of course, if within the period of 3 years the liability is quantified, determined and intimated to the Government servant after complying with the procedure contemplated by the Rules, then it is open to the Government to adjust such quantified liability from the DCRG

payable to the Government servant. As mentioned above, the right of the Government servant to get the DCRG and the right of the Government to adjust the liability of the Government servant from the DCRG is not necessarily related to the departmental proceedings or judicial proceedings as contemplated by Rule 3 of the Rules. Of course, if in departmental proceedings or judicial proceedings it is found that any loss has been caused to the Government by the Government servant, then it can, of course, be used as a material to fasten the liability on the Government servant. But, this is, of course, subject to the compliance with the principles of natural justice, as contemplated by Note 2 to Rule 2 of Part III of the Rules. What, we are concerned in this case is essentially as to the question whether the pendency of the judicial proceedings beyond a period of 3 years from the date of retirement of the Government servant can be a reason for withholding the DCRG, otherwise due and admissible to the Government servant. In my view, it cannot be. The last portion of Rule 3 A(a), as mentioned above, will have to be restricted in its operation for a period of 3 years from the date of retirement of the Government servant.

22. There is yet another reason, why this interpretation is to be adopted. If the Rules do not provide for forfeiture of the DCRG, as a punishment, unlike in the case of pension, then what is the purpose that could be achieved, by withholding the DCRG beyond the period of 3 years from the date of retirement of the Government servant? As mentioned above, it is the property of the Government servant. It is not vulnerable to forfeiture or reduction and therefore, the Government would be exposing itself to an action of unjust retention of a property due to a citizen. In such circumstances, it would be in public interest the Government disburses the DCRG, if liability has not been determined within a maximum period of 3 years from the date on which the Government servant becomes a pensioner.

23. Counsel on either side referred to several decisions of this court touching upon Rule 3 part III of the Rules. For the sake of completion, I shall now refer to the same. In **George v. Tahsildar, Cochin {1992(4) KLT 919},** this court held that the misconduct alleged against the Government servant is not one causing a pecuniary loss to the Government, then the proceedings initiated against the Government servant cannot be

treated as a proceedings coming within the purview of Rule 3 Part III of the Rules. In **Karunakaran Pillai v. State of Kerala {1994(1) KLT 78}**, it was held that the Government has no authority to withhold the pensionary benefits payable to the pensioner on the sole ground that a criminal case of misappropriation is pending against him. The Government's right to fix the liability and recover the same from the gratuity, in terms of the Rules, was at the same time, recognized. In **Jayarajan v. State of Kerala {2001(3) KLT 929}**, a Division Bench of this court recognized the right of the Government to continue the proceedings under Rule 3 Part III of the Rules even in the absence of an allegation of pecuniary loss to the Government. In the decision reported in **Sreepath Bhatt v. Tahsildar {2004 (3) KLT SN 17, Case No.22}** it was held that in spite of the pendency of Vigilance enquiry, provisional pension and other terminal benefits can be paid and bar is against the payment of DCRG. A Full Bench in **Raveendran Nair v. State of Kerala {2007(1) KLT 605 FB}** held that recovery from pension can be ordered even if no pecuniary loss as such is caused to the Government. The question as to how far the interdiction against

the payment of DCRG on account of the pendency of a judicial proceeding can be exercised did not come up for consideration of this court in **Sreepath Bhatt's case.** In **Sugathan v. Cochin Devaswom Board {2005(1) KLT 46}**, a Division Bench of this court held that a portion of DCRG cannot be withheld after retirement without initiating any departmental proceedings while in service. In the said case, the Bench of this court issued a mandamus, for disbursal of the withheld portion of the DCRG finding that quantification and recovery has not taken place within a period of one year. In **Bhaskara Hegde v. State of Kerala {2005(2) KLT SN Page 10 Case No.9}** this court held that mere pendency of a criminal case is not a ground to hold full pension or DCRG to the pensioner.

24. None of the judgments of this court have taken a view inconsistent with the scope and ambit of Rule 3 A (a) of Part III of the Rules, as has been delineated above. Nor has this court held that the Government has a right to retain the DCRG, even after a period of 3 years from the date of retirement, without the determination and quantification of the liability and intimation of

the same as contemplated by Note 3 of Rule 3 of Part III of the Rules.

25. For all the reasons mentioned above, I am of the view that the petitioner is entitled to succeed. The 2nd respondent is directed to take appropriate steps to see that the DCRG found admissible and due to the petitioner by the Accountant General is disbursed to him within a period of two months from the date of receipt of a copy of this judgment. I make it clear that it is without prejudice to the right of the Government to initiate appropriate proceedings for recovery of loss, if any, caused to it by the petitioner, by recourse to the Civil Court. In the facts and circumstances of the case, there will be no orders as to costs.

I place on record my appreciation and gratitude for the exhaustive research and submissions made by Adv.Sri.S.P.Aravindakshan Pillai, who acted as amicus curiae.

Sd/-

(V.GIRI)

JUDGE

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